IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 105 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL NAVINBHAI RANCHHODBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 105 of 2001

MR JM BAROT for Petitioner No. 1

MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 05/10/2001

ORAL JUDGEMENT

#. As per the brief facts of the case, the present petitioner alongwith other 3 accused was charge-sheeted in the Court of learned Judicial Magistrate First Class, Patan in Criminal Case No.3281/1998. Out of 4 accused,

in all, 2 were absconding and, therefore the charge was framed against the present petitioner - original accused No.1 - Patel Navinbhai Ranchhodbhai and accused No.4 Dube Vishwanath Parasnath for the offences punishable under Section 25(1)(A), 27(1) and 29(A) of the Arms Act. After recording of the evidence the learned Magistrate vide his order dated 4.11.1999 convicted the present petitioner original accused no.1 for the offences punishable under Section 25(1)(A) of the Arms Act. While original accused No.4 was acquitted and appeal came to be filed by the present petitioner against the decision of learned Judicial Magistrate First Class in the Court of learned Sessions Judge at Mehsana Camp Patan being Criminal Appeal No.79/1999 which also came to be dismissed vide order dated 18.10.2000 of the Additional Sessions Judge, Mehsana Camp at Patan. Being aggrieved by the conviction order passed by learned Magistrate and as confirmed by the Additional Sessions Judge, Mehsana, this Revision Application is filed by the present petitioner - original accused No.1.

#. Learned advocate Mr.J.M.Barot, for the petitioner and learned APP Mr.B.Y.Mankad, for the State were heard.

#. Learned advocate Mr.Barot contended that according to allegations made, on 4.4.1998 at about 15:30 hours to 18 hours near Mithivavdi Bus Stand in the presence of police party and the panchas, 4 revolvers of 32 bore and 30 live cartridges were found from the present petitioner, which was according to prosecution an illegal possession. It was contended that in this facts of the case the prosecution examined only police witnesses and no independent witness was examined. Both the panchas of the panchnama drawn at the relevant period did not support the prosecution case and, therefore, the learned Magistrate ought not to have placed reliance on police witness. It was also contended that this is an admitted fact that whether accused No.1 present petitioner was found with the police, and the raid was carried on was a public place like Bus Stand, even then no independent witnesses are examined. The Court instead of appreciating the evidence on record has given undue weightage to the fact that the present petitioner was involved in a bank robbery case earlier. Learned advocate Mr.Barot further urged that in that case he is ultimately acquitted. It was urged that since the panchnama is not proved, the fact that any illegal weapon was recovered from the petitioner was not proved by the independent witness by the prosecution. The story that for some other investigation the police bounced on the accused is also not proved. Ultimately it is urged that

the accused may be given benefit of probation. It is urged that therefore the orders of conviction passed by the learned Magistrate and as confirmed by the Appellate Judge being perverse, accused - present petitioner be acquitted. Learned APP Mr.B.Y.Mankad has supported the order of conviction passed by learned Magistrate and the confirmation of the same by the Appellate Court.

#. Having regard to the rival contentions, it is clear that though no independent witnesses have been examined but that itself cannot be considered defect in the prosecution case. The rule of law is, the Court should appreciate the evidence on record and come to the conclusion if the evidence inspires confidence as to convict the accused. Learned advocate Mr.Barot has relied on a decision of Supreme Court in the case of Sans Pal Singh Vs. State of Delhi, as reported in A.I.R. 1999 Supreme Court 49, wherein it is observed that while country made revolvers were recovered from the accused, though public witnesses were available, could have been associated by the prosecution and no explanation was coming from the prosecution for this, the conviction on the basis of evidence of police officials cannot be maintained. But the facts in this case are different. The place of offence from where the weapons were found were public place, but the procedure has taken about 2 and half hours. It could not be assumed that during all this period the public was available. Secondly, while considering the evidence of the police witnesses the learned Magistrate has rightly come to the conclusion that there was nothing on the record to come to a conclusion that the evidence of the Police Officer was tainted and could not be believed. The evidence of Police Officer if inspire confidence can be relied upon in the facts and circumstances of the given case if the same is unblemish credit-worthy. Such evidence cannot be discarded only because independent witnesses from the public are not examined by the prosecution. The facts of the present case are totally different from the case of the Supreme Court as above. Each Police Officer examined in this case is found trust worthy by the Magistrate and in the First Appeal and/or in this Revision it can be said that there was no any intrinsic defect in the evidence of the Police Officer. So, the contention that the conviction based on the evidence of Police Officer alone is bad, cannot be accepted, and for this reason the evidence of panchas has also been rightly discarded by the learned Magistrate from consideration. The contention that the petitioner is entitled to benefit of probation also cannot be accepted, having regard to the past record of the petitioner. The contention that the

Court has placed reliance on past record of the petitioner also has no substance, because the learned Magistrate has considered the evidence of each of the witnesses and has come to the above conclusion.

#. In this view of the matter, this Revision Application is required to be dismissed and stands dismissed. Notice is discharged. Record and proceedings be sent to the trial Court.

(J.R.VORA, J.)

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